

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA)	DOCKET NO. 1:08-CR-55
)	
vs.)	VOLUME VI
)	
KATHY RAY WAHLER, EDWARD)	
WILLIAM WAHLER, and LEWIS)	
VINCENT HUGHES,)	
)	
Defendants.)	
_____)	

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE RICHARD L. VOORHEES
UNITED STATES DISTRICT COURT JUDGE
NOVEMBER 19, 2009

APPEARANCES:

On Behalf of the Government:

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Charlotte, North Carolina

1 THURSDAY MORNING, NOVEMBER 19, 2009

2 (Jury not present.)

3 THE COURT: Good morning, ladies and gentlemen.

4 MS. PARROTT: Good morning, Your Honor.

5 MS. ROSE: Good morning, Your Honor.

6 THE COURT: Are the parties ready to move along and
7 have the opening -- rather, the closing arguments?

8 MS. ROSE: Yes, sir.

9 DEFENDANT HUGHES: Yes.

10 DEFENDANT EDWARD WAHLER: Yes.

11 THE COURT: And all the parties and counsel will
12 argue from their places.

13 May we have the jury, please.

14 (Jury entered the courtroom.)

15 THE COURT: Good morning, members of the jury.

16 Members of the jury, under our rules the government
17 has the first opportunity to make argument to you because it
18 has the burden of proof. Then the defendants will have
19 opportunity to make argument and respond to the government
20 argument. And finally, the government will have an
21 opportunity to respond to the defense arguments. And after
22 that's done, the court will give you the rest of the
23 instructions and you'll be deliberating on the case.

24 Is the government ready to proceed?

25 MS. ROSE: Yes, Your Honor.

1 THE COURT: You may.

2 MS. ROSE: Thank you, Your Honor.

3 May it please the court:

4 I've got some ocean front property in Arizona. And
5 from the front porch you can see the sea. I have ocean front
6 property in Arizona. And if you'll buy that, I'll throw the
7 Golden Gate Bridge in for free.

8 Those are the words from a country music song. But
9 I think they pretty well sum up this case. It's just not
10 real. It's a fraud. And just as you know that there's no
11 ocean front property in Arizona, you know you can't write
12 checks on a closed account. And you know someone cannot sell
13 you the Golden Gate Bridge. And you can't pay a debt on a
14 nonexistent account. This is well-known to all of us. So
15 it's a fraud.

16 And what is a fraud? The judge is going to tell you
17 it's an intent to deceive, to deceive another, to obtain money
18 or something of value. And that's the bottom line. And
19 there's law more fully to explain the illegal acts and to tell
20 you, define for you what all of this means, and to define for
21 you more fully the defendants' illegal activities. And as
22 you've heard from the judge, it's your job to apply that law
23 to the facts and the evidence that you've heard in this case.

24 And I'm going to very quickly just walk you through
25 the procedure because that's -- now that you've heard the

1 facts and the evidence, that's the next part of your job.

2 This is when your work begins.

3 The judge is going to tell you that the first count
4 in the bill of indictment is the conspiracy count. And he's
5 going to tell you that this conspiracy related to a scheme to
6 defraud financial institutions, the bank, the Federal Reserve,
7 and to use the mails to do so.

8 And he's going to tell you that a conspiracy, while
9 it may sound big and complicated, it's an agreement. It's
10 just a meeting of the minds. Perhaps in the jury room you all
11 stood up and kind of shuffled, let somebody pass, maybe, who
12 was in seat number 8 here and you were in seat number 3. Did
13 you have to say go ahead? You had a meeting of the minds
14 based upon what was happening. Based upon that understanding.
15 You didn't have a contract. It wasn't written. It wasn't
16 expressed. You didn't go through the details. You just had a
17 meeting of the minds.

18 And the judge will tell you that that's what a
19 conspiracy is. That it's a meeting of the minds. And we must
20 prove to you that at least one of these defendants and another
21 person knowingly and deliberately arrived at an agreement that
22 they would commit these offenses against the United States,
23 that being the mail fraud to commit the bank fraud.

24 And as I said, we're not required to prove that
25 there was a contract or an express agreement or they even had

1 talked about the details of how this would happen. Just that
2 they together accomplished in some way a common goal.

3 And even though a defendant may not have joined in
4 the agreement at the beginning but at some point in between,
5 they're still responsible.

6 And even though they might not have known
7 particularly all of the details of the agreement or did not
8 participate in each act or didn't even play a major role in
9 accomplishing this unlawful goal, that still doesn't determine
10 whether there is conspiracy.

11 And the judge is going to tell you that the
12 conspiracy had to be formed during the dates alleged in the
13 bill of indictment and, at least in some way, either mail
14 fraud or bank fraud, either or both, was accomplished by some
15 agreement by one of these parties at some point. Some time at
16 least one overt act after June 3 of 2003. Just one act. It
17 doesn't means the ones before that don't count. It just means
18 at least one act had to occur after June 3 of 2003.

19 That's the conspiracy.

20 Now, the next part of the indictment is going to be
21 going more specifically into the bank fraud and the mail
22 fraud. And as to that, and you heard the judge tell you, the
23 government bears the burden of proof. So as to the mail
24 fraud, we have to show that there was this scheme or an
25 artifice, and the judge will define that for you, to defraud

1 somebody or obtain money or other property by means of false
2 or fraudulent representations or promises, and that these
3 promises were material promises. That means that they would
4 reasonably get someone to part with their money. And that
5 they did this with the intent to defraud that person of their
6 money. And that they used the mails to further that intent or
7 to further those representations. And that any one of these
8 people at some point could have aided or abetted, counseled,
9 commanded, induced or procured the commission of this offense.
10 You're going to have the mail fraud and aiding and abetting
11 the mail fraud.

12 So what is fraud? The judge will tell you this can
13 be defined in many ways. Half truths, that's fraud.
14 Concealment of important facts, that's fraud. And you listen
15 for these words from the judge's instructions. Concealment of
16 important facts or important information.

17 And the fraud doesn't actually have to work.
18 Unsuccessful schemes and frauds are to be found just as
19 illegal as those that are successful.

20 And you have to have this intent to defraud. You're
21 going to hear the word to deceive or to cheat.

22 Now, members of the jury, you probably wanted to
23 jump over that rail and knock me down when I kept putting up
24 those mail receipts and the green return receipt and mail
25 receipt, and was this sent and was it received. It seemed

1 tedious I know. But we bear the burden of proof. And we
2 collected that evidence and we proved each and every one of
3 these mail counts to you. We put it before your eyes.
4 Physical evidence, members of the jury.

5 The good thing about it is the judge is -- the bill
6 of indictment which you'll have to follow lays it out for you.
7 And the bill of indictment will show you the count; the date
8 that is relevant to that particular count; which defendant,
9 some or all, that were involved; the institution or the
10 document that was the document used in furtherance of the
11 scheme; and where it was mailed to. All of that is there.
12 It's your job to go through each of those and consider did one
13 or all of these defendants engage in some part of that or did
14 they aid and abet someone in doing so? Did they help in some
15 way however small?

16 The next part of the indictment that you'll be
17 considering or the next counts are going to be the bank fraud
18 counts. And the judge is going to give you, again, the law
19 that is applicable.

20 First, that it is a scheme or a plan of action, a
21 course of conduct or an intent to deprive someone of something
22 of value. To cheat somebody. To get money, funds or credit
23 from a financial institution by a false representation or
24 false promises. That's the first thing we need to show you.

25 The second thing is that the institution was FDIC

1 insured. You're probably wondering why are they talking about
2 is this bank insured? Is this bank FDIC insured? And putting
3 up all those certificates. It's an element. It's something
4 we're required to put up, and we did that. Or is it a member
5 of the Federal Reserve?

6 And that the way that -- to get the money, the funds
7 or credit was what? Through false representations, false
8 promises. The very same things. The half truths and
9 deception.

10 And did anybody aid, abet, counsel, induce or
11 procure in any way the furtherance of this bank fraud?

12 Bank fraud can be proved in a couple of ways, and
13 the judge will tell you that. Kind of an either/or. You
14 choose the method. You may find both. That's for you to
15 determine.

16 Once again, it's very specifically laid out in the
17 bill of indictment: The dates of the offenses; the name of
18 the defendants; the banking institution; and what was done to
19 commit this act or what fictitious documents were submitted to
20 these financial institutions.

21 Members of the jury, I would submit to you the
22 government has done its job here. We have shown you each and
23 every one of those elements.

24 But here's what they're going to say. You probably
25 knew this. You probably picked up on it. They thought it was

1 all okay. Or at least part of it. Depending on which
2 evidence you take from them. We had a good faith belief that
3 it was okay to do this. And the judge will tell you about
4 what is a good faith offense. The judge is going to tell you
5 that good faith is inconsistent with an intent to defraud or
6 an intent to obtain money by false representations.

7 And the judge is going to tell you that a defendant
8 does not act in good faith if he or she honestly holds a
9 certain belief or opinion but they knowingly make false or
10 fraudulent representations to others. Good faith means that
11 you have an intent not to take advantage of someone else.

12 What is good faith? Good faith is also -- the law
13 is very clear in saying if you disagree with the law, no
14 matter how much you disagree with the law, that's not a good
15 faith misunderstanding or mistake. Because it's a duty. It's
16 a duty of everybody, of all citizens to follow the law. You
17 don't need the judge to tell you that, but you know that. It
18 is the duty of all the citizens to follow the law.

19 And in line with that good faith defense, the judge
20 is going to talk to you about something else you may have
21 heard about or something else for you to consider in whether
22 you believe this good faith defense. It's called deliberate
23 ignorance. Willful blindness. And we are able to show you,
24 members of the jury, that if a defendant deliberately closes
25 their eyes to what would otherwise have been obvious, that

1 actions could show you that the ignorance is a deliberate one
2 or that it is intentional blindness to the actions that are
3 going on, that the eyes have been closed to the reality, then
4 it doesn't constitute good faith.

5 So simply put, members of the jury, reason and
6 common sense. You know, you come in here from your daily
7 lives, from your various jobs, time with family, and you come
8 to a really unfamiliar setting and you hear some strange
9 propositions. Some which are true; many of which are not.
10 But you are thrown into an uncertain and unusual situation.
11 And what is important for you to understand is that you have
12 all the tools that you need to do your job. You've got the
13 facts and the evidence. You paid attention. We saw that.
14 Judge Voorhees is going to give you the law. But the best
15 tool you have, members of the jury, the tool that you did not
16 leave at that front door is your reason and your common sense.
17 That's what you need to do your job.

18 They're going to come in here and tell you maybe
19 they disagreed with the law or maybe somebody told them it was
20 okay. Use your reason and common sense looking at all the
21 facts and the evidence you have before you. And it's clear
22 from what you've heard -- I don't know if that's going to
23 change in their closing arguments, but that they just don't
24 agree with the law. They just don't agree with it. They
25 just -- and that's -- that doesn't count. I'll admit, I like

1 to drive a little fast. But I can't go out on Interstate 40
2 and go a hundred. If I said to the trooper that stopped me:
3 I don't think there should be speed limits. I think citizens
4 should be able to drive as fast as they want because we're
5 free and we're citizens and I don't believe in that speed
6 limit sign; therefore, I can't have -- I can't have done
7 anything wrong. I didn't form the intent to commit a crime
8 because I don't believe in your law.

9 It just doesn't work that way. Because to be a
10 member of a free society, we have to have some boundaries and
11 we have to have some laws. So even if you disagree with it,
12 you still have to follow the law. Isn't that reason and
13 common sense? Is that something you knew when you came in
14 that door: That you've got to follow the law? Yes. Don't
15 leave that reason and common sense behind. Don't allow them
16 to avoid responsibility by some of these propositions that
17 they're going to make or have made.

18 We didn't just make a lot of statements. We gave
19 you physical evidence: The mail receipts, the documents.
20 Physical, ample evidence from which each of you could
21 determine that these defendants willfully and knowingly
22 engaged in fraud.

23 As you listen to their contentions, I want you to
24 think about the law that I just discussed and the law that I
25 promise you you're going to hear from the judge. And when

1 they're finished, I'm going to conclude. But as you listen to
2 what they have to say, listen with reason and common sense.

3 THE COURT: Ms. Wahler, if you wish, you would be
4 next.

5 DEFENDANT KATHY WAHLER: Thank you.

6 Ladies and gentlemen of the jury, you've seen and
7 heard all the evidence from the prosecution and I am confident
8 that what you have seen and heard clearly shows that I am not
9 guilty of conspiracy, bank fraud or mail fraud. Let's review
10 the evidence the government put forth.

11 What the government submitted into evidence does not
12 -- does have my signature, but that does not show I had any
13 illegal intent. Just good faith on my part. I admitted I
14 signed my name while relying on my husband that everything was
15 okay. I had no reason to question otherwise. I knew my
16 husband had done research. And as Dr. Todd testified, as an
17 expert he knows the difference. But the average layman
18 clearly wouldn't know the difference.

19 The time the BOE's were used was short, and these
20 documents -- Dr. Todd stated the period of time the documents
21 were done was in the early stages of the movement. And it
22 didn't peak for another year and a half. And Ed had long
23 since abandoned those things.

24 I had no criminal intent to break any laws of the
25 land. I have never even had a speeding ticket or a parking

1 ticket, much less planned illegal acts.

2 My family in no way had any gain from these
3 documents. No money came to us nor any company paid anything
4 out to us. In fact, we've lost far more in this whole mess
5 than money could ever measure.

6 There was never any fraud in my heart for I believed
7 all this to be true. The prosecution never showed at any time
8 on my part that I didn't cooperate with them to the best of my
9 knowledge. They could not show my participation in any
10 seminars, calls or any research materials. As Agent Andy
11 testified, there were four computers and only one of those
12 computers held anything on it.

13 I'd like to remind the jury of the prosecution's
14 witness, Ms. Messer, who stated that I referred to Ed said,
15 pertaining to the documents put forth in this case.

16 Also, Mr. Turner for the prosecution said he talked
17 with my husband almost every day in preparing -- and
18 participated in preparing documents and he testified as to my
19 not having any involvement or knowledge.

20 Dr. Clarkson testified I'd never even spoken with
21 him about political beliefs or attended seminars, but was
22 centered on fulfilling my Christian duties as a wife and
23 mother.

24 I'd like to state that I am not on any government
25 assistance nor ever have been. I work and support myself and

1 my children. My parents opened their home to us as we are
2 family. I have never defrauded anyone or anything in my life.
3 I hold the laws of the heavenly father as laws to live by,
4 simply stating no lying, cheating, stealing or killing. In
5 the big picture, going against these rules would result in the
6 judgment of God and losing eternity with my heavenly Father.
7 And it means -- that means more to me than anything else. So
8 it's just not worth it. If I thought that these things were
9 illegal, I wouldn't have signed my name.

10 I'd like to address the filings that Ms. Rose put in
11 the case that were done on the advice of someone that I
12 thought Ed approved of and his qualifications sounded
13 appropriate. Ed's mother put me in touch with Sean at Ed's
14 request. And I can say -- what I can say is I was scared.
15 I was desperate. And I was just trying to put my family back
16 together.

17 And just because I was aware of the Patriot meetings
18 and -- or was present is not enough to convict me. The court
19 will instruct you that mere presence or knowledge of any
20 activity doesn't make me guilty.

21 In conclusion, I know about these documents now
22 where I knew nothing then. I still have no interest in them.
23 Have no -- no burning pressure inside to research them or
24 study them. I could care less. I just want to live my life
25 with my family, raise my children, and give God the praise for

1 every day. Thank you.

2 DEFENDANT HUGHES: Are you ready for me?

3 THE COURT: Yes, sir.

4 DEFENDANT HUGHES: Good morning, ladies and
5 gentlemen of the jury.

6 Let me repeat again that I have never, ever intended
7 to commit fraud against anyone or anything. Banks included.
8 Or to do anything that was illegal. It's just not my nature.
9 I believe in and obey to the best of my ability God's laws as
10 set forth in His holy scriptures. I am committed to the
11 teaching and spreading of God's words. So how would I then
12 turn around and break one of those laws by committing fraud?

13 Why would I jeopardize my business which has been
14 successful for more than 35 years and my ability to do what I
15 truly love which is designing new products by knowingly
16 violating the laws of this country?

17 At the time of my arrest -- excuse me. At the time
18 the arrest warrants were issued, I was part way through
19 designing a new product of my own conception which would be
20 beneficial to all the people of this world and which would
21 help our environment. I want to go back and finish that
22 project. Ed and I have other projects which we talked about
23 that we want to do which would also help people and would help
24 the environment. Each of us has worked on these ideas in our
25 minds while we've been locked up waiting for this trial. We

1 believe that we will be able to proceed with those when we're
2 found not guilty and returned to our homes and our workshops
3 and our labs to do what we do best.

4 The prosecution has failed to show any violation of
5 the law by me or any intention to break the law or any
6 intention to help anyone else break the law. The prosecution
7 has shown you the International Claim Administrative Remedy
8 and tried to get you to do -- to believe that because the two
9 of them are against banks, they must be an attempt to fraud.

10 But the prosecution has given you nothing to show
11 that these are not consistent with the procedures set forth in
12 Title 5 of the U.S. Code and the Administrative Procedures
13 Act.

14 The prosecution has given you nothing to show you
15 that they are not the proper thing to do before going into a
16 court of law under a civil suit. The prosecution has given
17 you nothing to show that this is not why they were done. Has
18 the prosecution offered any of these -- has the prosecution
19 offered anything to show you that it was not our intention to
20 follow up with a lawsuit? The answer is no. In fact, I
21 showed you that I did follow up with the administrative
22 procedure and the notary protests with lawsuits filed in the
23 United States District Court, and I'd like to show you that
24 again.

25 Can you zoom out a little so they can see the top?

1 Okay. What this is is a printout from a service
2 called Pacer. Pacer is what the attorneys use to file
3 documents into the court electronically. Pacer service is
4 also available to the public for a fee. You don't necessarily
5 have the same access that an attorney would, of course, but
6 you can pull documents.

7 So what we have is upper -- in the upper left-hand
8 corner is a code WAWD which stands for Washington, the Western
9 District. And what you're looking at are cases that I filed
10 as a result of the admin process against the banks.

11 The bottom most case down there is scratched out
12 because that's not a case that I filed. That case was filed
13 on my behalf as a part of a cluster of lawsuits that were
14 filed in a number of people's names because it was found that
15 the Trustee Service Company was operating in the state of
16 Washington without a license to do so and had done some --

17 MS. ROSE: Your Honor, none of this is in evidence.
18 I apologize for the -- but none of this has been put into
19 evidence.

20 THE COURT: Overruled.

21 DEFENDANT HUGHES: I'm sorry, I did read all of this
22 from the stand when I presented testimony.

23 Okay. We're done.

24 If I was trying to commit fraud against a bank,
25 would I have taken this whole process into a court of law for

1 the whole world to see? I think not.

2 The prosecution has tried to make you think that
3 just because we used something called a bill of exchange
4 during the notary protests that we must be trying to commit
5 fraud. This is like saying that your using a check is fraud
6 because it is possible for someone else to commit fraud by
7 writing a bad check. It is not what the instrument is called
8 that matters. I think you've heard in the testimony that a
9 check is a bill of exchange.

10 It's not what it's called but how it's used. Yes,
11 millions of fraudulent bills of exchange have been sent to the
12 Treasury, but probably a hundred times as many bad checks have
13 had to have been written off by the banks. Does that make
14 using a check fraud? Of course not. Neither does using a
15 bill of exchange in the proper way make it illegal. Remember
16 the two bills of exchange were not against the Treasury. They
17 were not sent to a bank to be negotiated. They were held by
18 the notary to prove a claim.

19 Just because someone sends you a bill saying you owe
20 them \$20, are you going to pay that bill? No. You want
21 something to show that you owe that bill. Well, you saw that
22 an invoice was sent and a bill of exchange was referenced to
23 prove the invoice. If the bank denies they owe something,
24 then we have a controversy, and now we can go to court. If
25 there's no controversy, the court has nothing to rule on and

1 the court can't proceed. This is what we did. The notary
2 protest proved the controversy. Thus, I could go to court.

3 At all times I have conducted myself according to my
4 good faith efforts to understand and act in accordance with
5 the laws, statutes, codes and court decisions of this nation.
6 I took the actions that I did because they are prescribed by
7 the laws, the statutes, the codes, the rules, the regulations,
8 and the court decisions in this country.

9 The prosecution has tried to impugn that I do not
10 believe in the laws of the government. Nothing could be
11 further from the truth. Yes, the government has problems.
12 But I think the underlying principles are still the best there
13 is. Why would I expect to get satisfaction under the law if I
14 didn't believe in it?

15 Ladies and gentlemen, I have tried any means
16 available to me, including filing a lawsuit in the District of
17 Columbia and filing a counterclaim in this case, to find out
18 why I might have broken some law. The government has never
19 answered me. Until I heard the expert witnesses in this case,
20 I didn't have a clue. Now I see what the government claims
21 about me would be true if, if I had done what the government
22 claims. But I didn't.

23 The government has not shown that following Title 5
24 of the U.S. Code can be fraud. How could they? They have not
25 shown that promissory notes between me and Ed were fraud

1 because they were private. The government has not shown that
2 the bill of exchange is not the proper instrument to use in a
3 notary protest. And the government has not disputed that a
4 notary protest is proper and lawful.

5 The government has alleged that I somehow committed
6 mail fraud. Well, if mailing documents which are part of the
7 necessary process before going to court is mail fraud, then
8 you better lock up most of this country.

9 In short, the government has not shown that I have
10 broken the law. How could they when I was making a good faith
11 effort to fully comply with the laws that are set forth in the
12 statute, codes, and et cetera, as set forth in court cases,
13 and as explained to me by those whose full-time profession is
14 arguing the law.

15 Therefore, ladies and gentlemen, I ask that you find
16 me not guilty of all the charges. Thank you.

17 DEFENDANT EDWARD WAHLER: Ladies and gentlemen of
18 the jury, I'd like to thank you for your participation in one
19 of the great institutions that makes the United States of
20 America one of the truly special nations of the earth:
21 Participating in a jury.

22 As we come to a close, I would also like to express
23 my heartfelt thanks for your being patient and diligent in the
24 performance of your duties. You suffered through my
25 on-the-job training; my first, and hopefully last, such

1 experience.

2 I'd ask you to peer deeply into the essence of this
3 trial and see if what I believe it is. When we were driven to
4 resort to the courts to bring an end to the years of
5 harassment and surveillance by filing a proper and justified
6 civil action in federal court, in a pattern continuing now for
7 six years, the answer is criminal prosecution, a denial of
8 bail, and a mysteriously dismissed lawsuit. Of course, I'm
9 referring to our suit in DC.

10 Why did the government, with over five years to
11 pursue this case, choose to do so exactly when we brought our
12 concerns and issues before the court? Concerns, issues, and
13 questions stemming from research they were loath to answer.
14 I'll let you form your own conclusions.

15 The government has sought to create an impression in
16 this case, innuendos and illusion. There were many, many
17 documents which were repeatedly mischaracterized without any
18 real analysis. They just put them up, said this is what it
19 says.

20 There was no actual analysis of the content of the
21 document itself. Mr. Heath, the government's own witness,
22 admitted that he did not look at a single law cited.
23 Essentially, the message was just take our word for it.
24 Except for Mr. Heath, every other witness essentially was
25 stating facts to the collections of the evidence. Yet, not a

1 single original of a document was shown to you, the jury.

2 Where are they?

3 I was duly impressed with Mr. Todd's recitation and
4 analysis of why the lay people, and at least two judges as we
5 demonstrated, can form mistaken conclusions about these
6 documents. After six years it is finally all clear to me.
7 Mr. Todd's suggestion that his testimony from a court case
8 such as this should be widely disseminated is sound. I hope
9 someone will heed the suggestion finally.

10 I tried to illustrate in as an illuminating fashion
11 as possible that there were two distinct phases in the
12 timeline of the development of our research and as it was
13 presented in this case.

14 The first phase around April of 2003 involved the
15 bills of exchange, closed account checks, same thing, which
16 has been shown on the record during the 2002, 2003 time frame,
17 a state and federal court judge ruled is properly discharging
18 a debt.

19 The second phase was the exhausting of our
20 administrative remedy pursuant to the law, not the least of
21 which is the Administrative Procedures Act in Title 5 of the
22 United States Code. The government repeatedly tried to create
23 the erroneous impression these documents were something they
24 were not. I hope taking your valuable time to go through one
25 of the administrative remedy documents closely was beneficial

1 to you in ascertaining the relevant facts with respect to the
2 administrative process. And the administrative process is in
3 no way related to Redemption. I think we stated that clearly
4 several times.

5 The government was not able to show in even the
6 slightest way that we had made any wrongful conclusions of the
7 law in the use of the administrative process. And please keep
8 in mind they have had these documents for over five years.
9 The government continually tried to create the false
10 impression these were financial documents, which of course you
11 now know they were not. They're simply a statement of facts
12 with a ledgering of our believed damages. Hence, any claim of
13 fraud with these documents is easily defeated.

14 By waiting these five long years, the government has
15 painted themselves into a statute of limitations box. Once
16 again calling into question their true motivation for bringing
17 this case now. The government was well aware of the *Bank One*
18 *v. Ward* case in Florida and the *U.S. v. Williamson* case in
19 Waco, Texas. I personally shared that information with Agent
20 Romagnuolo within weeks of the search warrant. They have
21 evidence that Sara Fugate and Jerry Williamson had used these
22 same bills of exchange, yet they never bothered them.

23 The government offered no rebuttal for these court
24 cases which we relied upon for our good faith belief that
25 these instruments were proper and certainly not unlawful, at

1 least to the best of our knowledge and understanding in
2 agreement with what the judges found.

3 The government went far afield from the direct
4 issues in this case trying to cast aspersions to create
5 impressions that would cast me in the worst light to you, the
6 jury members. I hope you can take away the impression that we
7 were reasonably confident in explaining and defending our
8 conclusions and political beliefs. I love my country. I want
9 my children to grow up and prosper in a place where the rule
10 of law is still our guiding principle and the people can enjoy
11 life, liberty, and the pursuit of happiness. Where we all can
12 prosper at no one's mutually exclusive expense. I have to
13 believe you want these things also. I hope you come away from
14 this with the understanding that a 76-year-old banking
15 emergency is not conducive to these ends.

16 Due to the complexities of the case, I felt it best
17 that the facts concerning my actions came directly from me. I
18 hope you find I was able to carry the presumption of innocence
19 into a conclusion of innocence. While the government carries
20 the burden of proof, I believe -- I believe you have the right
21 to hear both sides and I tried to give you my testimony as
22 directly and simply as possible.

23 With regard to summary witness Andy Romagnuolo, he
24 was not truthful about the facts surrounding his version of
25 events regarding any purported appearance in our DC lawsuit by

1 him or his attorney, and I would ask you to please consider
2 this in your deliberations.

3 While Dr. Robert Clarkson and Richard Turner had
4 complimentary things to say about me, not a single prosecution
5 witness that has had contact with me had anything to say
6 against my character or inner personal behavior at any time
7 over the last five years.

8 With respect to count one, conspiracy to commit
9 fraud, I would offer the members of the jury that every act
10 alleged was within the letter of the law as I understood it.
11 And to the extent that I acted in concert with others, there
12 was no object, goal or intention to commit fraud of any sort.
13 The law as I understood it and communicated to others was
14 clearly spelled out and demonstrated with no intent to
15 deceive.

16 The testimony and evidence clearly demonstrate there
17 was no knowingly and deliberately arrived at intention or
18 understanding to commit an offense that was criminal against
19 the United States or any other party. We are simply sharing
20 the results of our research and testing the veracity of that
21 research.

22 The government has failed to provide any evidence
23 that I knowingly or willingly performing any criminal act.
24 With both expert witnesses -- even both expert witnesses
25 testified lots of people had believed that these actions were

1 defensible and proper. Even if as a result of ignorance,
2 mistake or accident. And certainly without a clear intention
3 on their part.

4 How can a reasonable conclusion be reached that once
5 presented with signed orders of a state and federal judge who
6 are trained in the law and in fact presumed to know the law
7 and had the benefit of hearing both sides of the argument in
8 those court cases with respect to the legitimacy of these
9 documents and still ruled that these documents were void and
10 proper, how can any such action knowingly and willfully be an
11 overt act to commit a criminal crime? It just doesn't pass
12 the logic test. That would force one to consider these judges
13 aided and abetted the crime, which is a laughable proposition.

14 It is also not a common hallmark of a criminal
15 conspiracy or criminal act to provide signed affidavits, true
16 return addresses, and other forthright and blatant examples of
17 one's belief in the legitimacy of one's actions. There was
18 nothing clandestine about it. The witnesses testified that we
19 openly discussed it with our friends and acquaintances. This
20 clearly demonstrates a lack of intent.

21 I would submit to you that these actions show an
22 unwavering belief and honestly held opinion that these actions
23 were not criminal in nature. As demonstrated, I took a
24 reasonable and deliberate care in forming my beliefs and
25 opinions on this matter and felt completely justified in

1 relying in good faith on the judges who are held in society as
2 the final arbiters on what is deemed to be lawful and proper.
3 Even Walker Todd testified that such a belief was reasonable
4 for all but the most thoroughly trained expert.

5 Such a good faith reliance which forms a deeply held
6 belief and honest opinion is a complete defense even if that
7 belief or opinion is later held to be inaccurate, incorrect or
8 wrong. It wasn't until Walker Todd's testimony and his clear,
9 concise explanation that I was able to take my belief
10 regarding these instruments from one of not working, which we
11 experienced back in 2003, to one where they're not correct.
12 There was no illwill, malice or intent of taking unfair
13 advantage of another. But in fact, was only trying to claim
14 what was already there in the Treasury direct account. That's
15 what these people did in these two lawsuits.

16 An essential element of mail fraud and abetting
17 charges is that state of -- is that a statement or assertion
18 which concerns a material or important fact or a material or
19 important aspect of the matter in question was either known to
20 be untrue at the time that it was made or used or that it was
21 made or used without -- with reckless indifference to the
22 truth or was made with intent to defraud.

23 That's what this whole thing comes down to. Okay.
24 You, members of the jury, are going to have to decide whether
25 we convinced you credibly that we relied on everything we knew

1 and all the evidence we had in our possession back in 2003.

2 As has already been stated, the government has
3 failed to show even the slightest evidence of any such
4 knowledge as to any fact or aspect of the matter in question
5 which was known to be untrue. In fact, I have shown evidence
6 to the contrary and demonstrated a solid legal foundation to
7 believe that the facts as known were true and represented no
8 intent to defraud.

9 As was demonstrated by the documents themselves,
10 there was no desire or purpose to cause a loss to anyone, but
11 instead, an intention to access one's Treasury direct account.
12 Once again, I restate that good faith reliance was made on the
13 finding of trained legal practitioners in the form of a state
14 and federal judge and others who were presenting this
15 information in a cogent and reasonable manner.

16 With respect to the bank fraud charges, no attempt
17 was made to obtain money, funds or property owned by another.
18 The documents were intended to access funds belonging to me
19 for the benefit of my creditors. And of course, the good
20 faith reliance defense is applicable and the jury is asked to
21 apply it here as well.

22 Another important point I would ask the jury to be
23 mindful of is that when you are considering the reasonableness
24 of my beliefs, keep in mind that you probably would have been
25 extremely doubtful prior to your exposure to expert witness

1 testimony in this trial that the United States was declared
2 insolvent and bankrupt in 1933 and the ensuing banking
3 emergency would last for 76 years and counting. Or that the
4 United States has pledged some portion of your, your
5 children's and your grandchildren's future income to the
6 national debt. Or that a bank creates money out of thin air
7 based solely on your signature. Yet, now you've been exposed
8 to these things by a credible expert witness in this case.

9 These are but a few of the scores of shocking
10 revelations I have discovered over the last ten years or so.
11 Therefore, your yardstick of what is reasonable or might be an
12 honestly held belief should be based on a much more tolerant
13 standard than someone unexposed to even a few facts which you
14 now have been made aware of.

15 Retired Judge Napolitano, chief legal counsel for
16 FoxNews, has written several books, one of which is entitled
17 "Constitutional Chaos: What Happens When the Government
18 Ignores it's Own Laws?" His last book was called "A Nation of
19 Sheep," where he expertly makes the case that we as the people
20 of this country need to become more engaged in the governance
21 of our great country. In his words, becoming wolves.

22 For the sake of my children and all of my fellow
23 countrymen, I now have a long track record of standing up for
24 the principles of good government and sound fiscal policy.
25 Walker Todd correctly stated that the level of debt and other

1 aspects of our monetary and banking systems are at a minimum a
2 moral affront. We are all being burdened with a load from the
3 excess of the banking industry. And I would ask you, the
4 members of the jury, to not let the government use this case
5 to silence one of Judge Napolitano's wolves.

6 Ms. Rose tried to create the impression that we were
7 trying to take some special privilege by use of these
8 instruments. However, we're all created equal under the law.
9 And had the promoters of this process been correct and had the
10 two judges, who are obviously similarly convinced, been
11 correct, the same benefits would have been applied to us all
12 equally.

13 This case is about good faith. Can we have a good
14 faith belief and reliance on what our courts tell us? Even
15 about an obscure and novel idea such as the use of the bills
16 of exchange. I would not -- I would not want to live in a
17 country where we can be criminally prosecuted six plus years
18 after the fact for discovering something that needed to be
19 tested to see if it was indeed possible. There is no other
20 way of knowing. The only way I could test the promoters'
21 claims and determine the veracity of the judges'
22 determinations was with my family's own credit accounts. That
23 is simply logical. The government is grasping at straws to
24 find any evidence of intent to defraud or commit a crime.

25 So to silence a voice which has been asking

1 troubling questions for too many years, ultimately resulting
2 in putting these questions before a federal court in
3 Washington, DC, they had to reach back six years to see if
4 they could get you to silence that voice.

5 Our political beliefs are not on trial here. What
6 is being questioned is whether, in an effort to understand a
7 monetary system that has strayed from the sound principles of
8 the founders to a complex money-of-exchange based system
9 operating under a 76-year-old emergency, the people can be
10 prosecuted for trying to uncover its inner workings.

11 The First Amendment says that we have a right to
12 peaceably assemble and protest what we as a people see as an
13 indignation against our dignity and our nation. We further
14 have the right to petition for a redress of grievances.
15 People getting together to put together documents to express
16 their ideas about the causes of those grievances should not be
17 able to be labeled a conspiracy. If that were possible,
18 Thomas Jefferson and his fellow countrymen would be so guilty.

19 Since the courts, according to Walker Todd, have
20 decided that the moral wrong of our financial system is not a
21 proper legal claim, a petition for redress of grievances would
22 seem a reasonable means of expressing our moral outrage.
23 Don't let them use this case to quiet our voice.

24 As you heard during the testimony, I had countless
25 interviews with Agent Andy over the years. I shared my many

1 elements of my research with him. The government has had all
2 of my computers since 2004 and they have all my research since
3 2004 that was later acquired because my laptop and desktop
4 computers were turned over to them shortly after my arrest.
5 So on my computers were files spanning over ten years of
6 research and communications with government agencies, local,
7 state and federal, lawsuits, arbitrations, presentations to
8 Congress. The only thing they've been able to find is one
9 isolated incident over six years ago that lasted a few months.

10 This alone should be conclusive evidence that we are
11 diligent and careful in our research and only act when we have
12 a reasonable basis to do so. There has been no testimony or
13 evidence that we disagree with any law. We have repeatedly
14 cited the law and that we agree with it and want it to be
15 upheld.

16 In closing, I respectfully ask you to find me
17 innocent of all these charges and send me home to be with my
18 blessed family. And I would ask that you further find my wife
19 Kathy innocent for all the reasons mentioned, as well as the
20 fact that she was simply doing as I had asked her. I thank
21 you.

22 MS. ROSE: Members of the jury, if the government
23 had undertaken to respond to all that was thrown at you
24 through these documents, misstatements of the law,
25 misrepresentations, we'd be here past Thanksgiving. The

1 bottom line is we stuck with the facts and the evidence.

2 They keep citing these two cases, this Florida case
3 and this Texas case. We didn't see the underlying documents.
4 We didn't see whether there was money in any accounts. We
5 didn't see whether there was an appeal of this case and
6 whether it was upheld. And that's part of this whole process
7 through this case. It's all been portions of the truth. And
8 that's why fraudulent schemes are able to sometimes work.
9 Like both experts told you, when you string together terms
10 that might have a legitimate meaning, it doesn't make the
11 document legitimate. I think the word nonsensical was used.

12 They claim that they engaged in a legal process.
13 Let me just tell you, members of the jury, we don't charge
14 people criminally who are engaged in civil lawsuits with
15 whomever. People are engaged in lawsuits all the time.
16 People have disagreements with others and the civil courts are
17 the appropriate place to do that.

18 Well, here's what they failed to tell you. Any time
19 they tried to bring these cases in any court, the court
20 dismissed it. Mr. Hughes threw up something there for you to
21 look at and I hope you noticed the dates. He filed these
22 lawsuits -- and if any of you have ever been involved in any
23 civil lawsuit, it's a lot different than how we move through
24 the criminal courts. There are interrogatories and responses
25 and this and that. It takes a while. Every one of those was

1 gone in a matter of a few months.

2 And I suggest to you that it was the same result
3 that the judge in DC found. I don't know why they keep
4 talking about having won this case in DC. We put the order
5 into evidence. The judge said it was nonsensical, fatuous,
6 and served no purpose other than to harass. And members of
7 the jury, that's part of this whole scheme is that you send
8 somebody these fake documents and then when they don't
9 respond, you start harassing them with lawsuits and
10 threatening them through these lawsuits. That's part of the
11 fraud. And that's exactly what they did.

12 And for them to claim that they sent these fake
13 checks with fake stamps and no money and changed the name of
14 it to something else and say it's not part of the same scheme
15 is ridiculous. Particularly when they responded and referred
16 back to those checks. What does it tell you, members of the
17 jury? That this is not good faith.

18 Do you know what good faith is? Do you know what
19 you're going to hear the judge tell you? That they are facts
20 about which are uncertain or mistaken. And are the
21 circumstances believable? What tells you that these acts were
22 not committed in a good faith belief?

23 First of all, let's consider the source. Now,
24 Mr. Wahler when he testified yesterday talked -- they throw
25 out these names of cases. And I'm going to talk about one of

1 those in just a moment. They drop names of cases and little
2 snippets of supposed statements from the law, and tell you
3 that they learned this through their studies. He can tell you
4 all these specifics, but what could he not tell you? When I
5 asked him how did you meet this person that was going to teach
6 you how to do this or told you how to do that? I don't
7 remember. Let me suggest to you -- and I think you may have
8 already drawn this conclusion, particularly from hearing from
9 Mr. Clarkson, who's not a lawyer. He's been disbarred because
10 of his felony convictions. And who's not a doctor. Who said
11 that these people got together and discussed their beliefs.
12 He can't remember where he heard about this. I suggest it was
13 through people like Robert Clarkson and the fringe.

14 And it was the same way, how did Ed Wahler in North
15 Carolina meet Lewis Hughes way out in the state of
16 Washington -- big S, little S, state of Washington? Because
17 they were brought to bed together by these fringe
18 antigovernment, sovereign, whatever you want to call it,
19 beliefs. And fine. It's okay to have those beliefs. But
20 it's not okay to take it and steal from somebody else and to
21 spend somebody else's money and say I don't have to repay it
22 because I signed my name. Consider the source of his supposed
23 training.

24 And for them to say we researched, we came across
25 this case, a case about which you don't have the full facts.

1 Both experts talked about this scheme coming in and
2 out for 20 years, and that the Freeman used it. Now, I can
3 promise you that if you put in Redemption scheme or fraud or
4 bill of exchange on the internet, it's going to pop up about
5 the Freeman. They told you it had been coming and going for
6 20 years, and they say there was nothing -- the consummate
7 researchers found nothing to say that this wasn't lawful. Is
8 that believable?

9 They brought in Mr. Clarkson, the well-known
10 convicted tax offender who has tights, a cape that says Great
11 One, and a sombrero to talk about credibility. Where did they
12 learn about these schemes?

13 And what did Richard Turner tell you? Ed told me
14 about it. We went and it sounded too good to be true. And
15 thought, well, we'll give it a whirl. And when it didn't
16 work, I stopped. And I told him to stop too and he kept
17 saying, no, I'm going to -- I've just got to file some more
18 things. Meanwhile, living in a house he hadn't paid for and
19 wasn't planning to despite his promises to do so.

20 And what was the name of this alleged training?
21 Debt elimination. That should have given you some idea. Not
22 debt elimination like being responsible with your credit or
23 debt elimination by paying your debts. It was by these crazy
24 documents and writing checks by saying that wasn't an account
25 we meant to use. How reasonable is that?

1 And how reasonable is it to believe that in order to
2 pay your debts, you have to mail your documents to the
3 secretary of the United Nations, to the director of Homeland
4 Security and to the president? That actually -- when you look
5 at these return services that are on here, it's amazing who
6 they're sending it to. Kofi Annan who was at the time the
7 secretary general of the UN. Why didn't they walk down to the
8 bank? They didn't have any trouble going in to the bank in
9 Fletcher right near their house when they wanted to cash this
10 Andex check. They went in and took that money out right in
11 Fletcher. The bank documents say Fletcher. Why didn't they
12 just walk to the bank with these documents if they were really
13 believable?

14 And when the bank said it wasn't working, why didn't
15 they walk down and talk to their local banker? Would that
16 have been the reasonable thing to do? Would that have been
17 the reasonable thing to do?

18 Put a hundred dollars in an account -- here's the
19 interesting thing. You probably noticed from the bank records
20 there were two checks, a \$58 check and a \$42 check, to clear
21 out the hundred that was put in to open the account. They
22 didn't use these stamps on those checks, the ones where they
23 were going to get the money. They didn't start using the
24 stamps until they started sending it to other people.

25 The bank gave them notice. That was the first

1 indication. As if all the rest of it wasn't sending out red
2 flags and warnings. The bank told them. The bank told them
3 the account was closed. And if you look at those documents,
4 that happened on March 28th. And they proceeded to write
5 nearly \$400,000 worth of bad checks. Is that a reasonable
6 belief?

7 What would have been indications of good faith,
8 members of the jury? How about stopping? How about stopping
9 when someone told you it wasn't legal? Honest mistake,
10 reasonable belief. How about paying it back? I made a
11 mistake. I spent your money, spent it at Walmart.

12 Kathy: I didn't know. I didn't know any of this.
13 She knew he wasn't working. He quit. He said he dropped out.
14 He quit. Wasn't paying taxes. Quit working. Started doing
15 this. That's their evidence. But they didn't stop spending
16 that money. They didn't stop swiping those credit cards. And
17 claimed I didn't know. Did they pay it back?

18 They heard the word from a state judge, a federal
19 judge in their own county: This isn't legal. Did they pay it
20 back? Is putting a fake routing number on a document honest
21 and reasonable? As you heard the banking witnesses, that
22 routing number mattered. I specifically said even the zeros
23 count? Every number matters. And is it an honest mistake to
24 remove one of those zeros, one of the things that would most
25 likely you wouldn't notice and use it to try and get money

1 from somebody, to defraud somebody? Is that an honest
2 mistake?

3 Is it good faith to claim that you have an account
4 where none exists? Their experts told you there were no
5 Treasury direct accounts, and that's part of this whole
6 scheme. And that's part of this scheme that's been going
7 around forever and it's part of the scheme for which they
8 received notice. We showed you the printout. Yet, they
9 indicate that when they heard it here, it was news to them.
10 Kathy Wahler worked in a bank. Were they duped? Were they
11 duped by somebody?

12 Listen to the judge's instructions on willful
13 blindness and deliberate ignorance.

14 In direct testimony Kathy Wahler said, You know,
15 your husband says, oh, drop this off at the bank for me. You
16 know, that's -- I was just doing what he asked me to: Drop
17 this off at the bank. Okay. That's one thing to drive
18 through, drop it off, or to mail a package for your spouse.
19 It's quite another, and it might raise that red flag, it might
20 give you some indication that Kofi Annan, the Commissioner of
21 the Internal Revenue Service, Norman Mineta, the Secretary of
22 Transportation, Mike Easley, the Governor, Roy Cooper,
23 Attorney General, John Snow, Treasurer, George Bush, doing
24 business as the President of the United States, Tom Ridge,
25 doing business as the Director of Homeland Security, Elaine

1 Marshall, Secretary of State, and Colin Powell, Secretary of
2 State. Would that kind of raise a red flag to you?
3 Particularly when he's not working and no mortgages are being
4 paid. This was news to me.

5 And here's the best part. This is where that whole
6 "I didn't know" comes in. All of these -- this is a classic.
7 You're defrauding the credit card companies with these
8 mailings and you're paying for these expensive mailings with
9 the credit cards that you're defrauding. How is that for "I
10 didn't know." \$125 to Visa. \$64 to Visa. \$58 to Visa.

11 DEFENDANT EDWARD WAHLER: I object. This isn't in
12 evidence.

13 THE COURT: Overruled.

14 DEFENDANT EDWARD WAHLER: Can she tell the
15 difference on those between a debit card and a credit card,
16 sir?

17 THE COURT: Overruled.

18 DEFENDANT EDWARD WAHLER: Okay.

19 MS. ROSE: Is that good faith and is this credible
20 and believable?

21 I'm going to give one quick example of some of the
22 misstatements of law that you've heard.

23 Kept hearing Title 26 and they threw up something
24 and said that is a commercial crime, and laid out things.
25 Title 26 has some Internal Revenue Service. But also at the

1 time, ATF, Alcohol, Tobacco and Firearms, was under the
2 Treasury. And it talked about commercial crimes. Alcohol,
3 tobacco, and firearms are all regulated in commerce in some
4 way, as you know. Alcohol has special taxes. Cigarettes has
5 special taxes. And when it said commercial crimes, it meant
6 these are crimes that occur in commerce. That's one of the
7 elements of those crimes, that these items travel in
8 interstate commerce. Does that -- that was a misstatement to
9 you. That was only part of the law.

10 They threw up part of this thing saying the
11 corporate United States. That's under the Fair Debt
12 Collections Act.

13 My point is I'm not going to stand here and argue
14 all of this with them and I didn't take your time during the
15 case because it's preposterous and it's not believable and
16 it's not real and I'm not going to rebut all that nonsense for
17 you. Use your reason and common sense.

18 And is it reason and common sense to go into a
19 federal court, try to dismiss your own lawsuit and call the
20 judge a park ranger?

21 They believe they are above the law and they're
22 trying to convince you to go along with them. These are
23 intelligent people. People who had good life-styles. Worked
24 hard. Were doing some really good things. And dropped out.
25 He said, I threw the keys to my partner and quit. I quit

1 paying taxes. I quit working. I quit paying my debts. They
2 just quit. And took on this full-time. And why work 9:00 to
3 5:00 when you don't have to? It's like dope dealers we
4 prosecute. They make \$5,000 a day slinging crack. It's
5 easier than a 9:00 to 5:00. Why work? Why do you take that
6 God given intelligence and use it defrauding people? Why do
7 you want to quit being a citizen?

8 They want to stand here today and talk about this
9 great country. Why did you file papers divorcing yourself
10 from the United States? Which is it?

11 They were told to the bank -- by the bank, this is
12 no good. They were told by the credit card companies, this is
13 no good. They were told by the courts, this is no good. It's
14 harassing. It's nonsensical. They were told by the FBI, this
15 is no good. This doesn't work.

16 Why don't you pay it back? Just make it right.
17 They had every opportunity to in good faith make it right.
18 Did they care about what was happening in their home when over
19 and over and over again they were told that this is wrong?
20 No.

21 So here's the ultimate question going back to that
22 whole reason and common sense. If somebody walked in any one
23 of your businesses and asked for one of your products, roof or
24 whatever it may be, and they paid for it with one of these
25 documents. You sent them notice it didn't work. And then

1 they started filing documents at your business, harassing you
2 and threatening lawsuits and stating all kinds of nonsensical
3 legal -- and you had to go out and try to figure out how to
4 fix this. Is that acceptable? Because that's what happened
5 here.

6 Could you go next door to the Sub Shop and flop a
7 bill of exchange out there and walk away with your sub? No.
8 I mean, come on. Reason and common sense.

9 And could you take your birth certificate to one of
10 these restaurants out here and buy lunch? No. Reason and
11 common sense.

12 So, members of the jury, they haven't listened to
13 the courts. They haven't listened to the banks. They haven't
14 listened to the credit card companies. They haven't listened
15 to anybody that tried to talk to them about this. You make
16 them listen. Are you going to give them the thumbs up and
17 send them on their way to do it some more? Don't say by your
18 verdict that this is okay and that this is believable and that
19 this is the way to fix the financial system. How do you fix a
20 national debt by defrauding the banks? It's what they said
21 they were doing.

22 Don't let them walk away from here and go to their
23 fringe antigovernment, quasi divorced American friends and say
24 it worked. Because this will be the next one circulating on
25 the internet in some form or fashion.

1 So you're going to look at this verdict. As I said,
2 you can walk through -- the bill of indictment is laid out
3 very clearly for you there. We've shown you facts. We've
4 given you the evidence. Members of the jury, given the facts,
5 the evidence, and the law that you're going to hear from this
6 judge, I submit that if you do your job, you'll find them
7 guilty based on the facts, the evidence, and the law. And it
8 doesn't matter if you say guilty in capital letters or if you
9 say guilty in small letters, it's still going to be the same
10 verdict and it's still going to matter. You tell them by your
11 verdict I'm not buying what you're saying. Thank you.

12 THE COURT: Thank you all for the closing arguments.

13 Members of the jury, we'll take a break before we
14 conclude the instructions, so we'll ask for you to be ready to
15 come back in 10 to 15 minutes.

16 (Brief recess at 10:46 a.m.)

17 THE COURT: May we have the jury, please.

18 (Jury entered the courtroom.)

19 THE COURT: Members of the jury, we'll begin by
20 going over with you as we go through the different counts by
21 reading the statutes and give you the essential elements of
22 each offense.

23 Keep in mind as I review and summarize the charges,
24 that when you go into the jury room to decide the case, you
25 will have a copy of the bill of indictment with you, as well

1 as a copy of the instructions if you ask for it, so it won't
2 be necessary for you to try to memorize exactly how the
3 charges are laid while I am speaking. These summaries, I
4 hope, will help you when you sit down to a careful
5 consideration of the issues in the case.

6 Now, in the bill of indictment, the government
7 alleged, first of all, the 32 counts and began with an
8 introduction which goes on at some length. I won't go over
9 that with you, but you will have it with you in the jury room.
10 There are some paragraphs beginning with 1, 2, 3, and 4
11 describing relevant parties, then a section called The Scheme
12 to Defraud alleging in paragraphs 5 through 7 a number of
13 other things, and then they go through paragraphs lettered A
14 through Y that account in the government's view for the
15 different overt acts that the government contends were
16 committed in the perpetration of the various -- of the
17 conspiracy, and also entered into the charges in the other
18 counts, what we call the substantive counts, the bank fraud
19 and the mail fraud counts.

20 But you'll recall that the indictment is not
21 evidence and that's one reason I won't go over each and every
22 one of those paragraphs because it will take some time to do
23 it. You'll have them available to you and it's your job to
24 recall the evidence as it comes in.

25 But I will read over the -- count one because we're

1 going to start by instructing on the conspiracy. And it
2 alleges first of all that paragraphs 1 through 8 of the
3 introduction to the indictment are realleged and incorporated
4 by reference into count one.

5 And then it continues that from on or about April 5,
6 2003, and continuing until in or around February 2004, in
7 Buncombe County and Mecklenburg County, within the Western
8 District of North Carolina, and elsewhere, Kathy Ray Wahler,
9 Edward William Wahler, Lewis Vincent Hughes, and Richard
10 Walser Turner did knowingly, willfully and unlawfully combine,
11 conspire, confederate, and agree with each other, and with
12 other persons both known and unknown to the grand jury, to
13 commit the following offenses against the United States:

14 A, it goes on to allege it was a part and an object
15 of the conspiracy that the defendants, and others both known
16 and unknown to the grand jury, having devised a scheme and
17 artifice to defraud, and for obtaining money and property by
18 means of false and fraudulent pretenses, representations, and
19 promises, to wit: A scheme and artifice to defraud creditors
20 and others as set forth in the introductory paragraphs, would
21 and did cause things to be deposited with and delivered by the
22 U.S. Postal Service and private and commercial interstate
23 carriers for the purpose of executing said scheme and
24 artifice, in violation of Title 18, U.S. Code, Section 11 --
25 excuse me, 1341, mail fraud.

1 And paragraph B, it was a part and object of the
2 conspiracy that the defendants, and others both known and
3 unknown to the grand jury, having devised a scheme and
4 artifice to defraud, and to obtain by means of false and
5 fraudulent pretenses, representations, and promises money,
6 funds, and credits under the custody and control of federally
7 insured financial institutions, to wit: A scheme and artifice
8 to defraud creditors and others set forth in the introductory
9 paragraphs, would and did execute said scheme and artifice in
10 violation of Title 18, U.S. Code, Section 1344, bank fraud.

11 In other words, you have the allegation of
12 conspiracy and then it contends that the objects of it were to
13 commit mail fraud and bank fraud.

14 And the conspiracy charge goes on to allege certain
15 things under the heading of Overt Acts. It says, In
16 furtherance of the conspiracy, the defendants engaged in the
17 overt acts set forth in paragraphs 1 through 8, among others.

18 All in violation of 18, U.S. Code, Section 371.

19 Now, 371 reads as follows: If two or more persons
20 conspire either to commit any offense against the United
21 States, or any agency thereof, in any manner or for any
22 purpose and one or more such persons do any act to effect the
23 object of the conspiracy, each shall be guilty of an offense
24 against the United States.

25 So that statute breaks down into certain essential

1 elements. In order to find a defendant guilty of the
2 conspiracy charged in count one, the government must prove the
3 following essential elements beyond a reasonable doubt before
4 there could be a conviction. For your information, the first
5 essential element has to do with the existence of a
6 conspiracy; the second with membership in the conspiracy; the
7 third with the object of the conspiracy; and the fourth with
8 the overt act requirement.

9 More particularly, here are the essential elements
10 the government must prove beyond a reasonable doubt before
11 there could be a conviction:

12 That on or about the dates alleged, within the
13 Western District of North Carolina, that the conspiracy
14 described in count one was an agreement or understanding
15 between two or more persons, that the conspiracy was willfully
16 formed, and that it was existing at the time alleged in the
17 bill of indictment.

18 Next, that at some time during the existence or life
19 of the conspiracy, agreement or understanding, the defendant,
20 whose case you are considering, knew the purpose of the
21 agreement, and with that knowledge, then deliberately joined
22 the conspiracy, agreement or understanding.

23 Next, that the object of the conspiracy was to
24 commit mail fraud, bank fraud, or both of those offenses.

25 And that at some time during the existence or life

1 of the conspiracy, agreement or understanding, one of its
2 members knowingly performed one of the overt acts charged in
3 the indictment, and did so in order to further or advance the
4 purpose of the agreement.

5 Now, I will define some of the terms I just used in
6 the essential elements and you would apply those definitions
7 as you consider the evidence. And if I do not define certain
8 words, you will assign to them their ordinary, everyday
9 meanings.

10 You'll note that count one, as in the case of the
11 other counts, charges that the offense was committed in or
12 about or within a certain date or dates. I remind you that
13 the proof need not establish with certainty the exact date of
14 an alleged offense. It's sufficient if the evidence in the
15 case establishes beyond a reasonable doubt that the conspiracy
16 was committed on a date reasonably near the date or dates
17 alleged.

18 Now, a criminal conspiracy is an agreement or a
19 mutual understanding, knowingly made or knowingly entered into
20 by at least two people to violate the law by some joint plan
21 or common course of action. A conspiracy is, in a very true
22 sense, a partnership in crime. A conspiracy or agreement to
23 violate the law, like any other kind of agreement or
24 understanding, need not be formal, written or even expressed
25 directly in every detail. The government must prove that the

1 defendant, whose case you are considering, and at least one
2 other person knowingly and deliberately arrived at an
3 agreement or understanding that they, and perhaps others,
4 would commit offenses against the United States, including
5 mail or wire fraud, or both, by means of some common plan or
6 course of action as alleged in count one. It is proof of this
7 conscious understanding and deliberate agreement by the
8 alleged members that should be central to your consideration
9 of conspiracy.

10 To prove the existence of a conspiracy or an illegal
11 agreement, the government is not required to produce a written
12 contract between the parties or even produce evidence of an
13 express oral agreement spelling out all the details of the
14 understanding.

15 To prove that a conspiracy existed, moreover, the
16 government is not required to show that all of the people
17 named in the indictment as members of the conspiracy were in
18 fact parties to the agreement, or that all of the members of
19 the alleged conspiracy were named or charged, or that all of
20 the people whom the evidence shows were actually members of a
21 conspiracy agreed to all of the means or methods set out in
22 the indictment.

23 Unless the government proves beyond a reasonable
24 doubt that a conspiracy as just explained actually existed,
25 then you must acquit the defendant where that applies.

1 Now, before the jury may find that a defendant or
2 any other person became a member of the conspiracy charged,
3 the evidence must show beyond a reasonable doubt that the
4 defendant knew the purpose or goal of the agreement or
5 understanding and deliberately entered into the agreement,
6 intending in some way to accomplish the goal by -- the goal or
7 purpose by this common plan or joint action.

8 If the evidence establishes beyond a reasonable
9 doubt that this defendant in question knowingly and
10 deliberately entered into an agreement to commit offenses
11 against the United States, including mail or wire fraud, or
12 both, the fact that that defendant did not join the agreement
13 at its beginning, or did not know all the details of the
14 agreement, or did not participate in each act of the
15 agreement, or did not play a major role in accomplishing the
16 unlawful goal is not important to your decision regarding
17 membership in the conspiracy.

18 Certain things, on the other hand, do not make one a
19 member of a conspiracy. Merely associating with others and
20 discussing common goals, mere similarity of conduct between or
21 among such persons, merely being present at the place where a
22 crime takes place or is discussed, or even knowing about
23 criminal conduct does not by itself make someone a member of
24 the conspiracy, that is, a conspirator.

25 Now, if you concluded that the conspiracy did exist

1 as alleged and that the defendant, whose case you are
2 considering, knowingly and willfully became a member of it,
3 then you should next determine whether or not an object or
4 goal of the alleged conspiracy was to commit mail fraud, bank
5 fraud, or both, as alleged in count one.

6 Now, ultimately, the government must prove beyond a
7 reasonable doubt that a conspiracy was willfully formed and
8 had as its purpose mail fraud, bank fraud, or both. You
9 should make your determination as to the purpose or goal or
10 object of the conspiracy from all the evidence presented.

11 Keep in mind that there may be a conviction as to
12 the conspiracy count even though the conspirators may not have
13 succeeded in accomplishing their common object or purpose in
14 some way or ways and, in fact, may have failed in
15 accomplishing it.

16 I will define the terms "mail fraud" and "bank
17 fraud" later on in these instructions. And of course, you'll
18 be considering the definitions I give you about mail fraud and
19 bank fraud in connection with looking at the object of the
20 conspiracy because the government alleges the object was mail
21 fraud or bank fraud, or both. Specifically, the offense of
22 mail fraud is explained in relation to counts two through
23 twenty-four and the offense of bank fraud is explained in
24 relation to counts twenty-five through thirty-two.

25 You'll notice that the indictment charges that the

1 object of the conspiracy was to commit mail fraud or bank
2 fraud. It is not necessary for the government to prove a
3 conspiracy to commit both of these offenses. Rather, you may
4 find the essential element of the offense concerning the
5 object of the conspiracy is satisfied if you find beyond a
6 reasonable doubt that the object of the conspiracy was to
7 commit mail fraud on the one hand or, on the other hand, to
8 commit bank fraud, or perhaps both. But in any event, there
9 could not be a verdict of guilty on this count, count one,
10 unless you find unanimously and beyond a reasonable doubt that
11 the object of the conspiracy was to commit either mail fraud
12 or bank fraud, or both.

13 In other words, it wouldn't do if six of you thought
14 maybe it was mail fraud was the object and the other six
15 thought, no, it was just bank fraud, then that wouldn't be --
16 that wouldn't satisfy the unanimity requirement. You have to
17 agree on what the object was before there could be a
18 conviction because this is one of the essential elements of
19 the offense.

20 Now, in order to sustain this burden of proof on
21 count one, the government must prove beyond a reasonable doubt
22 that one of the members of the alleged conspiracy or agreement
23 knowingly performed at least one overt act and that this overt
24 act was performed during the existence or life of the
25 conspiracy and was done to somehow further the goal of the

1 conspiracy or agreement.

2 The term "overt act" means some type of outward
3 objective action performed by one of the parties -- one of the
4 parties to the agreement or one of the members of the
5 agreement or conspiracy which evidences that agreement. And
6 although you must unanimously agree that the same overt act
7 was committed, the government is not required to prove more
8 than one of the overt acts charged. The overt act may, but
9 for the alleged illegal agreement, appear totally innocent and
10 legal standing alone.

11 Now, in this case there's a limit on how much time
12 the government has, as in other cases. The government has a
13 limit on the time within which it must bring a bill of
14 indictment. So in that regard, we look to the timing of any
15 overt acts that you might find. For you to return a verdict
16 of guilty on the conspiracy charge, the government must
17 convince you beyond a reasonable doubt that at least one overt
18 act was committed by a member of the alleged conspiracy for
19 the purpose of advancing or helping the conspiracy and that
20 that particular overt act was done after June 3rd, 2003. The
21 verdict sheet for each individual defendant will direct you to
22 indicate whether the government has met its burden of proof on
23 this issue.

24 Now, then, evidence has been received in the case
25 that a certain person or persons who are alleged to have been

1 co-conspirators with the defendant have done or said things
2 during the existence or life of the alleged conspiracy in
3 order to further or advance its goals. So I'll talk to you in
4 that respect about the nature of the relationship between
5 alleged co-conspirators.

6 Such acts and statements of alleged co-conspirators
7 that may have been done during the existence or life of the
8 alleged conspiracy to further or advance its goals may be
9 considered by you in determining whether or not the government
10 has proven the charges in count one. And since these acts may
11 have been performed or these statements may have been made
12 outside the presence of a particular defendant and even done
13 or said without such defendant's knowledge, these acts or
14 statements should be examined by you with particular care
15 before considering them against the particular defendant. If
16 you find that the acts or statements were in furtherance of
17 the goals of the conspiracy and you find that the defendant in
18 question was or became a member of that conspiracy, then you
19 may consider those acts or statements as evidence against the
20 defendant.

21 You'll recall I said that a conspiracy is sometimes
22 accurately described as a partnership in crime. So there may
23 be relationships between partners where one is bound by the
24 other and that's what -- the kind of thing that we're talking
25 about here.

1 So acts done or statements made by an alleged
2 co-conspirator, however, before a defendant joined the
3 conspiracy may also be considered by you in determining
4 whether the government has sustained its burden of proof on
5 count one. But acts done or statements made before the
6 alleged conspiracy began or after an alleged conspiracy ended
7 may only be considered by you regarding the person who
8 performed that act or made that statement.

9 Now, in considering what person or persons may have
10 engaged in a conspiracy, it should be noted that a government
11 agent or informant cannot be considered to have been a member
12 of the conspiracy during the time such person was an agent or
13 informant. In the case of a person who may have participated
14 in the conspiracy but at some later time became an informant
15 for the government, of course, you may consider such a person
16 to have been a member of the conspiracy only up until he
17 became a government informant.

18 You may have heard evidence that Richard Walser
19 Turner became a government informant at some point in time.
20 You'll apply this instruction according to the facts you find
21 from the evidence.

22 Now, all criminal offenses have what we call a
23 mental element. In this case the term "knowingly" as used in
24 these instructions to describe the alleged state of mind of
25 the defendant means that the defendant in question was

1 conscious and aware of his or her actions, realized what he or
2 she was doing or what was happening around him or her, and did
3 not act because of ignorance, mistake or accident.

4 The term "willfully" as used in these instructions
5 to describe the alleged state of mind of a defendant would
6 mean that he or she knowingly performed an act deliberately
7 and intentionally, on purpose, as contrasted with acting
8 accidentally, carelessly or unintentionally.

9 The intent of a person or the knowledge that a
10 person possesses at any given time may not ordinarily be
11 proved directly because there is no way of directly
12 scrutinizing the workings of the human mind. So in
13 determining the issue of what a person knew or what a person
14 intended at a particular time, you may consider any statements
15 made or acts done or omitted by that person, and all other
16 facts and circumstances received in evidence which may aid you
17 in determining state of mind and in determining that person's
18 knowledge or intent. You may infer but are not required to
19 infer that a person intends the natural and probable
20 consequences of acts knowingly done or knowingly omitted.
21 It's entirely up to you, however, to decide what facts to find
22 from the evidence.

23 Now, in your deliberations as to each count
24 separately, you are instructed that the good faith of a
25 defendant is a complete defense to any of the charges in the

1 bill of indictment where that applies. For example, the good
2 faith defense may be found to apply to the conspiracy charge
3 as well as the mail fraud and bank fraud charges alleged in
4 the indictment because good faith on the part of a given
5 defendant is simply inconsistent with the intent to defraud or
6 the intent to obtain money or property by means of false or
7 fraudulent representations or promises.

8 A person who acts or causes another person to act on
9 a belief or an opinion honestly held is not punishable under
10 this statute, or any of the ones we cite in connection with
11 the different counts, because the belief or opinion turns out
12 to be inaccurate, incorrect or wrong. An honest mistake in
13 judgment or an error in management does not rise to the level
14 of intent to defraud. The mail fraud statute, for example, is
15 written to subject to criminal punishment only those persons
16 who knowingly defraud, attempt to defraud, or knowingly obtain
17 or attempt to obtain money or property by means of false or
18 fraudulent pretenses, representations or promises.

19 However, a defendant does not act in good faith if
20 even though he or she honestly holds a certain opinion or
21 belief, that defendant also knowingly -- if that defendant
22 also knowingly makes false or fraudulent pretenses,
23 representations or promises to others.

24 While the term "good faith" has no precise
25 definition, it means, among other things, a belief or opinion

1 honestly held in absence of malice or illwill and an intention
2 to avoid taking unfair advantage of another.

3 In determining whether or not the government has
4 proved that a defendant acted with an intent to defraud or the
5 intent to obtain money or property by means of false or
6 fraudulent pretenses, representations or promises, or whether,
7 on the other hand, the defendant acted in good faith, the jury
8 must consider all of the evidence in the case bearing on the
9 defendant's state of mind.

10 The burden of proving good faith does not rest with
11 the defendant, or any of them, because he does not have any
12 obligation, and she does not, to prove anything in this case.
13 It's the government's burden to prove to you beyond a
14 reasonable doubt as to the count under consideration that the
15 defendant acted with the intent to defraud or the intent to
16 obtain money or property by means of false or fraudulent
17 pretenses, representations or promises.

18 If the evidence in the case leaves the jury with a
19 reasonable doubt as to whether a defendant acted with the
20 requisite intent or in good faith, the jury then must acquit
21 the defendant of any counts where that applies.

22 Now, then, the government may prove that a defendant
23 acted knowingly by proving beyond a reasonable doubt that the
24 defendant in question deliberately closed his or her eyes as
25 to what would otherwise have been obvious to him or her. No

1 one can avoid responsibility for a crime by deliberately
2 ignoring what is obvious. A finding beyond a reasonable doubt
3 of an intent of a defendant to avoid knowledge or
4 enlightenment would permit the jury to find knowledge. Stated
5 another way, a person's knowledge of a particular fact may be
6 shown from a deliberate or intentional ignorance or deliberate
7 or intentional blindness to the existence of that fact.

8 It is, of course, entirely up to you to decide
9 whether you find any deliberate ignorance or deliberate
10 closing of the eyes and any inferences to be drawn from any
11 such evidence. You may not conclude that a defendant had
12 knowledge, however, from proof of a mistake, negligence,
13 carelessness, or a good faith belief in an inaccurate
14 proposition.

15 So summarizing, then, as to count one, considering
16 this count separately, I charge you that if you find from the
17 evidence and beyond a reasonable doubt that within the dates
18 alleged:

19 That the conspiracy described in the bill of
20 indictment, count one, was an agreement or understanding
21 between two or more persons, that the conspiracy was willfully
22 formed, and that it was existing at the time alleged;

23 Next, that at some time during the existence or life
24 of the conspiracy, agreement or understanding, the defendant
25 knew the purpose of the agreement and with that knowledge then

1 deliberately joined the conspiracy, agreement or
2 understanding;

3 Third, that the object of the conspiracy was to
4 commit mail fraud, bank fraud, or both; and

5 Next, some time during the existence or life of the
6 conspiracy, agreement or understanding, that one of its
7 alleged members knowingly performed one of the overt acts
8 charged in the indictment, and it did so in order to further
9 or advance the purpose or the agreement. And as I told you
10 earlier, that at least one overt act that you unanimously
11 agree on would have to have been committed after July 3, 2003.

12 And if you do so find, that is, that all those
13 elements have been met, then it would be your duty to return a
14 verdict of guilty as charged.

15 However, if you do not so find or if you have a
16 reasonable doubt as to one or more of the essential elements
17 of the crime charged, then it would be your duty to give the
18 defendant that benefit of that doubt and return a verdict of
19 not guilty.

20 Now, then, as to counts two through twenty-four,
21 each of those alleges a different violation of the mail fraud
22 statute.

23 Now, the bill of indictment in that respect reads as
24 follows. First of all, it alleges that paragraphs 1 through 8
25 of the introduction to this indictment are realleged and

1 incorporated by reference into counts two through twenty-four.

2 Paragraph 13 goes on to allege that on or about the
3 dates set forth below, in Buncombe County, Mecklenburg County,
4 and other counties within the Western District of North
5 Carolina, and elsewhere, the defendants identified below,
6 aiding and abetting each other, along with others both known
7 and unknown to the grand jury, having devised a scheme and
8 artifice to defraud or to obtain money and property by means
9 of false and fraudulent pretenses and representations, and for
10 the purpose of executing and attempting to execute the scheme
11 and artifice, did place and cause to be placed in a U.S. Post
12 Office and an authorized depository for mail, the mail matters
13 as described below for delivery by the United States Postal
14 Service and by a private or commercial interstate mail
15 carrier.

16 And then you'll note -- as I say, you'll have a copy
17 of this indictment with you -- that there is thereafter a
18 chart which has a number of columns. It first of all lists
19 the count, two through twenty-four. Then the next column
20 lists the date of the particular alleged offense and then the
21 defendant who is alleged to have committed the offense on that
22 particular date. And then it indicates in a column entitled
23 Item Mailed the various documents. And lastly, there is a
24 column entitled Recipient where the government alleges the
25 intended recipient of that mail. So that's how those counts

1 are alleged.

2 And it concludes, all in violation of Title 18, U.S.
3 Code, Sections 1341 and 2.

4 Now, Section 1341 provides that whoever, having
5 devised or intending to devise any scheme or artifice to
6 defraud or for obtaining money or property by means of false
7 or fraudulent pretenses, representations or promises, for the
8 purpose of executing such scheme or artifice, or attempting to
9 do so, places in any post office or authorized depository for
10 mail matter any matter or thing whatever to be sent or
11 delivered by the postal service, or deposits or causes to be
12 deposited any matter or thing whatever to be sent or delivered
13 by any private or commercial interstate carrier, or takes or
14 receives therefrom any such matter or thing or knowingly
15 causes to be delivered by mail or such carrier according to
16 the direction thereon, or at the place at which it is directed
17 to be delivered by the person to whom it is addressed any such
18 matter or thing, then such person shall be guilty of an
19 offense against the United States.

20 You'll note the mail fraud statute and under it
21 there are two avenues of proof under which a conviction is
22 possible. Namely, by either a scheme or artifice to defraud
23 or, on the other hand, by a scheme or artifice for obtaining
24 money and property by means of false or fraudulent pretenses,
25 representations or promises.

1 Proof beyond a reasonable doubt would also be
2 required to show that the mails were used for the purpose of
3 executing such scheme or schemes.

4 And, of course, your verdict would have to be
5 unanimous. For example, if you were considering a given count
6 of mail fraud, you would have to decide whether that --
7 unanimously whether it came under the prong of a scheme or
8 artifice to defraud or, on the other hand, the prong of a
9 scheme or artifice for obtaining money and property by means
10 of false or fraudulent pretenses, representations or promises.

11 Now, the government has also included in that -- all
12 those charges under the mail fraud statute, as well as the
13 bank fraud that you'll hear about a little bit later, an
14 aiding and abetting allegation. And aiding and abetting I'll
15 explain to you in a little more detail, but it's a situation
16 where an offense is committed by someone who we call a
17 principal, but it is aided by someone else who we call an
18 aider and abettor. And that statute reads as follows:

19 It alleges that whoever commits an offense against
20 the United States, or aids, abets, counsels, commands, induces
21 or procures its commission, is punishable as a principal.

22 It also alleges -- that is, it also reads that --
23 this is a statute. That whoever willfully causes an act to be
24 done, which if directly performed by him or another would be
25 an offense against the United States, is punishable as a

1 principal.

2 Now, I'll define aiding and abetting in a moment.

3 So the essential elements, then, of counts two
4 through twenty-four would be as follows:

5 To find a defendant guilty of one or more of the
6 offenses of mail fraud in counts two through twenty-four, the
7 government must prove to you beyond a reasonable doubt the
8 following essential elements:

9 That on or about the date alleged, in the Western
10 District of North Carolina, as to the defendant named in that
11 particular count, first, as detailed in counts two through
12 twenty-four, that a defendant knowingly devised or knowingly
13 participated in a scheme or artifice either to defraud or to
14 obtain money or property by means of false or fraudulent
15 pretenses, representations or promises.

16 Next, that the scheme or artifice to defraud or, as
17 the case may be, the alleged pretenses, representations or
18 promises, were material. That is, that they would reasonably
19 influence a person to part with money or property.

20 And next, that defendant did so with the intent to
21 defraud.

22 Next, that in executing, advancing, furthering or
23 carrying out this scheme to defraud, or to obtain money or
24 property by means of false or fraudulent pretenses,
25 representations or promises, the defendant in question used

1 the mails or caused the mails to be used;

2 Or that the defendant otherwise aided, abetted,
3 counseled, commanded, induced or procured the commission of
4 this offense.

5 So in each of these counts there's the option to
6 find that the defendant in question committed the offense
7 directly or did so by way of aiding and abetting, but you
8 would have to be unanimous in that respect as to whether the
9 person was an aider and abettor or whether the person directly
10 committed the offense.

11 Now, as I explained earlier, you'll note there were
12 two avenues of proof under which a conviction is possible as
13 to each of counts two through twenty-four if the government is
14 to carry its burden of proof. One avenue is a scheme or
15 artifice to defraud and the other avenue or prong is a scheme
16 or artifice to -- excuse me, artifice for obtaining money and
17 property.

18 Now, please keep in mind there could be no
19 conviction under either avenue of proof unless your verdict in
20 that respect was unanimous. The same unanimity requirement
21 applies as to the conspiracy count when you are considering
22 mail fraud, if any, as part of determining the object of the
23 alleged conspiracy.

24 The phrases "any scheme or artifice to defraud" and
25 "any scheme or artifice for obtaining money or property" mean

1 any deliberate plan of action or course of conduct by which
2 someone intends to deceive or to cheat another or by which
3 someone intends to deprive another of something of value.

4 The term "false or fraudulent pretenses,
5 representations or promises" means a statement or an assertion
6 which concerns a material or important fact or a material or
7 important aspect of the matter in question, and that was
8 either known to be untrue at the time that it was made or used
9 or that was made or used with reckless indifference as to
10 whether it was in fact true or false, and made or used with
11 the intent to defraud.

12 A "material fact" is a fact which would be of
13 importance to a reasonable person in making a decision about a
14 particular matter or transaction.

15 The term "false or fraudulent pretenses,
16 representations or promises" includes actual direct false
17 statements as well as half truths, and includes the knowing
18 concealment of facts that are material or important to the
19 matter in question and that were made or used with the intent
20 to defraud.

21 It is not necessary for the government to prove that
22 a defendant whose case you are considering was actually
23 successful in defrauding anyone or successful in obtaining
24 money or property by means of false or fraudulent pretenses,
25 representations or promises.

1 It is not necessary for the government to prove that
2 anyone has lost any money or property as a result of the
3 scheme or plan to defraud or the scheme or plan to obtain
4 money or property by means of false or fraudulent pretenses,
5 representations or promises.

6 An unsuccessful scheme or plan to defraud or to
7 obtain money or property by means of false or fraudulent
8 pretenses, representations or promises is just as illegal as a
9 scheme or plan that is ultimately successful.

10 "To act with intent to defraud" means to act
11 knowingly and with the intention or the purpose to deceive or
12 to cheat. An intent to defraud is accompanied ordinarily by a
13 desire or a purpose to bring about some gain or benefit to
14 one's self or some other purpose, or by a desire or purpose to
15 cause some -- to cause loss to someone else.

16 Now, with respect to intent under the mail fraud
17 statute, the good faith instruction, as I told you earlier,
18 and the deliberate indifference instruction also apply to
19 these counts. And in fact, they apply to all counts in the
20 whole indictment.

21 Now, the use of the United States mails or a private
22 or commercial interstate carrier is an essential element of
23 the offense of mail fraud. The government is not required to
24 prove that the defendant actually mailed anything or that the
25 defendant even intended that the mails or a private or

1 commercial interstate carrier would be used to further or to
2 advance or to carry out the scheme or plan to obtain money or
3 property by false or fraudulent pretenses, representations or
4 promises. The government must prove beyond a reasonable
5 doubt, however, that the mails or a private or commercial
6 interstate carrier were in fact used in some manner to further
7 or to advance or to carry out the scheme or plan to obtain
8 money or property by false or fraudulent pretenses,
9 representations or promises.

10 The government must also prove that the use of the
11 mails or of a private or commercial interstate carrier would
12 follow in the ordinary course of business or events or that
13 the use of the mails or a private or commercial interstate
14 carrier by someone was reasonably foreseeable.

15 It is not necessary for the government to prove that
16 a given item itself was mailed -- or that what was mailed was false
17 or fraudulent or contained any false or fraudulent statement,
18 representation or promise or contained any request for money
19 or thing of value. The government must prove beyond a
20 reasonable doubt, however, that the use of the mails or a
21 private or commercial interstate carrier furthered or advanced
22 or carried out in some way the scheme or plan to obtain money
23 or property by false or fraudulent pretenses, representations
24 or promises.

25 Now, each use of the mails or of a private or

1 commercial interstate carrier to advance or to further or to
2 carry out a scheme or plan to defraud or the scheme or plan to
3 obtain money or property by means of false or fraudulent
4 pretenses, representations or promises may be a separate
5 violation of the mail fraud statute.

6 The word "material" means that the scheme to defraud
7 involved material as opposed to inconsequential falsehoods. A
8 false statement is material if it has the natural tendency to
9 influence or is capable of influencing the decision of a
10 person or entity to which it is addressed. A matter is
11 material if a reasonable person would attach importance to its
12 existence or nonexistence in making a decision about a
13 particular matter or transaction.

14 A matter is also material if the maker or
15 representation -- excuse me, maker of the representation knows
16 or has reason to know that the representation -- that the
17 recipient of the representation regards or is likely to regard
18 the matter as important in determining his or her choice of
19 action even if a reasonable person would not so regard it.

20 The law holds that one who knowingly aids, abets,
21 counsels, commands, induces or procures the commission of a
22 crime just as criminally responsible as the one who actually
23 commits it. To be convicted of aiding and abetting, the
24 government is not required to prove participation at every
25 stage of an illegal venture; however, the government is

1 required to prove that the defendant in question knowingly
2 associated himself or herself with and participated in the
3 criminal venture. In other words, you should only find a
4 defendant guilty if the evidence proves beyond a reasonable
5 doubt that he or she knowingly participated in the principal's
6 criminal intent.

7 Finally, under the law it is not necessary that the
8 principal, that is, the one who actually committed the crime,
9 be convicted for you to find a defendant guilty of aiding and
10 abetting.

11 Now, moving to the bank fraud count. This will be a
12 little shorter because we have already defined a good many of
13 the terms which also apply here.

14 The elements of the offense here would be that on or
15 about the date alleged, in the Western District of North
16 Carolina, as to the particular defendant named in the
17 particular count:

18 First, that the defendant knowingly devised or
19 knowingly participated in a scheme or artifice either to
20 defraud or to obtain money or property by means of false or
21 fraudulent pretenses, representations or promises.

22 Second, that the scheme or artifice to defraud or,
23 as the case may be, the alleged pretenses, representations or
24 promises were material and -- that is, they would reasonably
25 influence a person to part with money or property.

1 Next, that the defendant did so with the intent to
2 defraud.

3 And next, that in executing, advancing, furthering
4 or carrying out this scheme to defraud or, as the case may be,
5 to obtain money or property by means of false or fraudulent
6 pretenses, representations or promises -- now, members of the
7 jury, I got off on the wrong track here. What I'm doing at
8 this point, it turns out, is reiterating the essential
9 elements of the mail fraud statute. And all the elements are
10 very similar.

11 But in any event, you'll recall that I've just given
12 you the essential elements that apply in the case of mail
13 fraud and I was -- I came to the purpose -- or rather, the
14 element that required the government to prove beyond a
15 reasonable doubt that in executing that scheme, there had to
16 be the use of the mails or causing of the mails to be used, or
17 that the defendant otherwise aided, abetted, counseled,
18 commanded, induced or procured the commission of the offense.

19 And if you find -- just reiterating and reminding
20 you that if you find that those elements have been met, then
21 you would return a verdict of guilty as charged.

22 But if you do not so find or if you have a
23 reasonable doubt as to one or more of the essential elements
24 of the crime charged, then it would be your duty to give the
25 defendant the benefit of that doubt and return a verdict of

1 not guilty.

2 Now, the statute that the government brought the
3 bank fraud charges under reads that whoever knowingly executes
4 or attempts to execute a scheme or artifice to defraud a
5 financial institution, or to obtain any of the monies, funds,
6 credits, assets, securities or other property owned by or
7 under the custody or control of the financial institution by
8 means of false or fraudulent pretenses, representations or
9 promises, shall be guilty of an offense against the United
10 States.

11 And these charges also allege aiding and abetting
12 which I have already explained to you.

13 So the -- under that statute, the requirement of the
14 government to prove beyond a reasonable doubt the essential
15 elements break down as follows:

16 The government would have to show that on or about
17 the date alleged, in the Western District of North Carolina,
18 as to the defendant named in the particular count:

19 That defendant knowingly executed a scheme or
20 artifice either to defraud a financial institution or to
21 obtain any of the monies, funds, credits, assets, securities,
22 or other property owned by or under the custody or control of
23 a financial institution by means of false or fraudulent
24 pretenses, representations or promises.

25 Second, that the financial institution was either

1 insured by the Federal Deposit Insurance Corporation at the
2 time or was a Federal Reserve Bank or a member bank of the
3 Federal Reserve system.

4 Next, that the defendant in question schemed to
5 either defraud a financial institution or, as the case may be,
6 obtain the money, funds or property owned by or under the
7 control of the financial institution was by means of material
8 false or fraudulent pretenses, representations or promises.

9 And that those -- and of course, you consider these
10 things in respect to each individual count in counts
11 twenty-five through thirty-two.

12 Next, that the defendant did so with the intent to
13 defraud; or

14 That the defendant otherwise aided, abetted,
15 counseled, commanded, induced or procured the commission of
16 the offense.

17 So like the mail fraud offense, there are two
18 avenues of proof under which a conviction is possible as to
19 counts twenty-five through thirty-two if the government is to
20 carry its burden of proof. One avenue of proof is a scheme or
21 artifice to defraud a financial institution; the other is a
22 scheme or artifice to obtain money or other property owned by
23 or under the custody or control of a financial institution.

24 Keep in mind there could be no conviction under
25 either avenue of proof unless your verdict in that respect was

1 unanimous. The same unanimity requirement applies as to the
2 conspiracy count when you are considering bank fraud, if any,
3 as a part of determining the object of the alleged conspiracy.

4 So I've already defined for you, for example, the
5 words "scheme or artifice to defraud," the words "false or
6 fraudulent pretenses, representations or promises," "aiding
7 and abetting" and the term "material." You'll recall those
8 definitions in your deliberations as to counts twenty-five
9 through thirty-two.

10 I remind you that the bank fraud statute requires
11 that the alleged false or fraudulent pretenses,
12 representations or promises made by a defendant to be material
13 or capable of influencing the decision of a person or entity
14 to which it is addressed.

15 The instructions regarding the mental elements of --
16 that is, defendant's -- a given defendant's intent such as the
17 terms "knowingly and willfully," the intent to defraud,
18 deliberate ignorance, and the good faith defense, all of those
19 instructions apply to the bank fraud counts as well.

20 A financial institution includes a bank whose funds
21 are insured by the Federal Deposit Insurance Corporation, a
22 commercial bank or trust company, a Federal Reserve Bank or a
23 member bank of the Federal Reserve system, or an agency of the
24 United States Government.

25 Now, then, reiterating the essential elements of the

1 bank fraud counts, I charge you if you find from the evidence
2 beyond a reasonable doubt that on or about the date alleged as
3 to each count, in the Western District of North Carolina, as
4 to the particular defendant named:

5 That the defendant knowingly executed a scheme or
6 artifice either to defraud a financial institution or to
7 obtain any of the monies, funds, credits, assets, securities
8 or other property owned by or under the custody or control of
9 the financial institution by means of false or fraudulent
10 pretenses, representations or promises; and

11 That the financial institution was either insured by
12 the Federal Deposit Insurance Corporation at the time or was a
13 Federal Reserve Bank or a member bank of the Federal Reserve
14 system; and

15 That defendant's scheme or artifice to either
16 defraud a financial institution or, as the case may be, to
17 obtain the money, funds or property owned by or under the
18 control of a financial institution was by means of material
19 false or fraudulent pretenses, representations or promises as
20 detailed in each of the counts; and

21 That defendant did so with the intent to defraud; or

22 That the defendant otherwise aided, abetted,
23 counseled, commanded, induced or procured the commission of
24 that offense, then it would be your duty to return a verdict
25 of guilty as charged.

1 However, if you do not so find or if you have a
2 reasonable doubt as to one or more of these essential
3 elements, then it would be your duty to give the defendant the
4 benefit of that doubt and return a verdict of not guilty.

5 Now, you've heard the evidence and the arguments of
6 counsel for the government and for each defendant. It's your
7 duty to remember the evidence whether it was called to your
8 attention or not. And if your recollection of the evidence
9 should differ from that of the attorneys or parties who spoke
10 to you in argument, you are to rely solely upon your
11 recollection of the evidence in your deliberations.

12 I have not reviewed the contentions of the parties,
13 but it's your duty not only to consider all the evidence, but
14 to consider also the arguments, the contentions and positions
15 urged by the government attorney or the defendants speaking as
16 their own attorneys in their speeches to you, and any other
17 contention that arises from the evidence, and to weigh them
18 all in the light of your common sense and, as best you can,
19 determine the truth of this matter.

20 The law, as indeed it should, requires the presiding
21 judge to be impartial. Therefore, do not assume that --
22 assume from anything I may have said or done, including any
23 question I may have asked during the trial, that I have any
24 opinion concerning any of the issues in this case that are
25 before you. Except for the instructions to you as to the law,

1 you should disregard anything I may have said during the trial
2 in arriving at your own findings as to the facts because I
3 have not -- you shouldn't take anything I have said or done to
4 be a hint of anything I may think about the case insofar as
5 the facts are concerned because that's entirely your job.

6 I instruct you that a verdict is not a verdict until
7 all 12 jurors agree unanimously as to what your decision shall
8 be as to any particular count and any particular defendant.
9 You may not render a verdict by majority vote or any other
10 voting mechanism aside from a unanimous verdict of 12.

11 The court instructs you that as soon as you reach
12 the jury room and before beginning deliberations, you select
13 one of your members to serve as the foreperson. This
14 individual has the same vote as the rest of the jurors but
15 simply serves to preside over the discussions. Once you begin
16 deliberating, if you need to communicate with the court, the
17 foreperson would send a written message to me by knocking on
18 the jury room door and handing it to the marshal. However,
19 you're not to tell me how you may stand numerically as to your
20 verdict. For instance, should you be split in your voting at
21 any particular time, you would not tell me any specific
22 numbers of division in your note.

23 We use a verdict sheet. It's simply the written
24 notice of the decision that you reach in this case. As soon
25 as you have reached a verdict as to the -- all the counts, you

1 will return to the courtroom and your foreperson will on
2 request hand the verdict sheet to the clerk. There are places
3 on the verdict sheet for the foreperson to enter the verdict,
4 sign it, and date it.

5 During the trial a number of items were received
6 into evidence as exhibits. You won't be taking the exhibits
7 with you into the jury room at the start because I'm not sure
8 you will need them. But if, after you have begun your
9 discussions of the case, you think it would be helpful to have
10 any of the exhibits with you in the jury room, you would
11 simply have the foreperson send a note asking for them.

12 Now, any time you want to take a break from your
13 deliberations, please let the marshal know that you are doing
14 so. You may take your breaks in the jury room. You may also
15 take a smoking break outside the jury room if escorted by a
16 marshal. In any event, you must not discuss the case during a
17 break unless all 12 of you are together. If not together, do
18 not talk about the case or resume deliberations until all 12
19 of you are back together and ready to do so.

20 Would there be any requests from the attorneys or
21 parties concerning these instructions at this point?

22 MS. ROSE: None from the government, Your Honor.

23 DEFENDANT EDWARD WAHLER: No, Your Honor.

24 DEFENDANT HUGHES: No, Your Honor.

25 THE COURT: All right. Thank you.

1 Now, then, given the hour, slightly after noon, what
2 we'll do is let all of you go to lunch at this time. And then
3 you'll remember the jury assembly room where you went earlier.
4 When you come back from lunch, you'll go to the jury assembly
5 room and then you'll be directed back to the jury deliberation
6 room and that's where the first 12 jurors in the box will
7 begin your deliberations.

8 The clerk will -- when you return from lunch, the
9 clerk will show you where the four alternate jurors will be,
10 and we'll need for y'all to remain available in case there
11 should be some problem come up with one of the other jurors,
12 sick child or whatever the case may be, that you would be
13 available should you be needed. So the alternates would
14 continue to keep an open mind about the case and don't discuss
15 it with anyone and then you'll be ready to serve as a juror if
16 you are called upon to enter the deliberations.

17 But the point here is you won't need to come back to
18 the courtroom. You'll come downstairs to the jury assembly
19 room. Then the first 12 will go on to the jury room. And as
20 soon as all 12 are accounted for in the jury room, you may
21 begin your deliberations without further instructions by the
22 court.

23 Is that clear enough?

24 THE JURY: Yes, sir.

25 THE COURT: And you might look at 50 minutes or an

1 hour, whatever it may take you. But as soon as you're all
2 together, whether it's 45 minutes from now or an hour, that's
3 when you may begin deliberating when you're all together.

4 So thanks for your attention to these matters and
5 we'll be hearing from you in due course. Thank you.

6 (Recess pending a verdict at 12:12 p.m.)

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8 THURSDAY AFTERNOON, NOVEMBER 19, 2009

9 THE COURT: Let's get the defendants in here.

10 (Defendants entered the courtroom.)

11 THE COURT: We're ready for the jury, Madam Clerk.

12 THE CLERK: Yes, sir.

13 (Jury entered the courtroom at 5:05 p.m.)

14 THE COURT: All right. We're in session.

15 Members of the jury, just to reiterate the events of
16 the afternoon, you started deliberating at approximately
17 1 o'clock, as I understand it, or shortly before that.

18 You asked for additional copies of the bill of
19 indictment, which we provided, which is certainly appropriate
20 given the length of the recitations in the indictment.

21 And then you asked for copies -- or at least a copy
22 of the jury instructions given by the court, which was sent
23 down.

24 And lastly, I sent you a note advising that it would
25 be appropriate to recess for the evening if -- unless you were

1 about to finish up in any event. And you sent back a note
2 that says, We will need to return tomorrow at 9:00 a.m. And
3 that would certainly be appropriate.

4 So we'll look for you tomorrow at 9:00 a.m. What
5 you can do is go on downstairs to the jury room, that is, the
6 downstairs deliberation room where you were today, the 12 of
7 you.

8 And the other four, if you will come to the area
9 where you were residing during the jury deliberations.

10 And again, we thank you all for your attention to
11 these matters. Please keep an open mind about the case. Hold
12 what you've got, in other words, as to your deliberations.
13 Don't discuss it with anyone. And we'll see you tomorrow at
14 9:00 a.m. We won't see you, but when you're all 12 checked
15 in, then you may start your deliberations. All right.

16 THE CLERK: Sir, juror number 14 is asking me if she
17 can be released. She had planned a trip to Florida tomorrow.

18 THE COURT: All right. Juror number 14 --

19 JUROR NO. 14: Yes, sir.

20 THE COURT: -- I believe you have a trip; is that
21 right?

22 JUROR NO. 14: Yeah. We're driving, but we're
23 supposed to be going to Florida.

24 THE COURT: Would there be any objection to
25 releasing the alternate number two?

1 MS. ROSE: Not from the government, Your Honor.

2 DEFENDANT HUGHES: No, Your Honor.

3 DEFENDANT EDWARD WAHLER: No.

4 THE COURT: All right. You may go ahead and take
5 your trip.

6 JUROR NO. 14: Thank you.

7 THE COURT: And thank you all. We'll look forward
8 to further proceedings tomorrow. Please remember the usual
9 instructions. Thank you.

10 (Evening recess at 5:10 p.m.)

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